

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION**

IN RE:)	
TERRY MANUFACTURING)	CASE NO. 03-32063-WRS
COMPANY, INC.)	CHAPTER 7
Debtor)	
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IN RE:)	
TERRY UNIFORM)	CASE NO. 03-32213-WRS
COMPANY, LLC,)	CHAPTER 7
)	
Debtor.)	
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J. LESTER ALEXANDER, III,)	
TRUSTEE OF TERRY)	
MANUFACTURING COMPANY, INC.)	
AND TERRY UNIFORM COMPANY)	
Cross-Appellant/Appellee,)	CIVIL ACTION NO.
)	
VERSUS)	2:07-CV-0585
)	
DELONG, CALDWELL, NOVOTNY,)	
& BRIDGERS, L.L.C. , DELONG)	
CALDWELL LOGUE & WISEBRAM,)	
DELONG & CALDWELL, L.L.C.)	
AND EARNEST H. DELONG, JR.,)	
Appellants/Cross-Appellees)	

**Appeal from the United States Bankruptcy Court for the Middle District of Alabama
Adversary Proceeding No.: 04-03135**

**REPLY BRIEF OF CROSS-APPELLANT, J. LESTER ALEXANDER, III, TRUSTEE OF
TERRY MANUFACTURING COMPANY, INC.
AND TERRY UNIFORM COMPANY, LLC**

Brent B. Barriere, T.A. (La. Bar No. 2818)
Catherine E. Lasky (La. Bar No. 28652)
PHELPS DUNBAR LLP
365 Canal Street, Suite 2000
New Orleans, LA 70130
Telephone: (504) 566-1311
Facsimile: (504) 568-9130
**ATTORNEYS FOR J. LESTER
ALEXANDER, III, TRUSTEE**

TABLE OF AUTHORITIES

CASES

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<i>Rogers v. Carmichael</i> , 184 Ga. 496, 192 S.E. 39 (Ga. 1937).....	15

In his brief, Cross-Appellee, Earnest H. DeLong, Jr. (“DeLong”) wholly fails to refute the threshold issue to the Trustee’s appeal- that the Bankruptcy Court erred in failing to find DeLong & Caldwell liable for the judgment granted in favor of the Trustee and against Earnest H. DeLong, individually.

As the Trustee argued in his initial brief, the Bankruptcy Court record is replete with evidence supporting DeLong & Caldwell’s liability both as the entity engaged by Terry Manufacturing and under the theory of *respondeat superior*. The engagement letter was sent to Terry Manufacturing on DeLong & Caldwell letterhead. *See* Trial Exhibit 10. DeLong & Caldwell issued all of the billing statements to Terry Manufacturing. *See* Trial Exhibit 13. Thirty of the thirty seven checks were issued to DeLong & Caldwell. *See* Trial Exhibit 12 *in globo*. Mr. DeLong routinely sent correspondence written on DeLong & Caldwell letterhead to counsel for Commercial Factors. *See e.g.*, Trial Exhibits 33 and 34. Further, Mr. DeLong signed all of the dozens of pleadings submitted in the Commercial Factors litigation on behalf of DeLong & Caldwell LLC or its successor firms. *See* Trial Exhibits 32, 35, 41, 42, 94, 95, 96, 97, 122, and 128. Further, Mr. DeLong’s malpractice insurance was provided through a policy issued to DeLong & Caldwell and its successor entities. None of these facts are contested.

Even if (and particularly if) DeLong & Caldwell, L.L.C. was a properly formed Georgia entity, the entity is liable for the actions of its member, Earnest DeLong. Georgia agency law is clear and DeLong does not refute: ““Each partner being the agent of the firm, the firm is liable for his torts committed within the scope of his agency, on the principle of *respondeat superior*, in the same way that a master is responsible for his servant’s torts, and for the same reason (that) the firm is liable for the torts of its agents or servants.”” *Flynn v. Reaves*, 135 Ga.App. 651, 652-

53, 218 S.E.2d 661 (Ga.App. 1975)(quoting *Hobbs & Tucker v. Chicago Packing etc., Co.*, 98 Ga. 576, 581, 25 S.E. 584, 587 (Ga. 1896); *Rogers v. Carmichael*, 184 Ga. 496, 192 S.E. 39 (Ga. 1937)).

CONCLUSION

By failing to hold DeLong & Caldwell liable for the payments it received from Terry Manufacturing, the Bankruptcy Court acted contrary to public policy and Georgia law by insulating the law firm engaged and paid by the client from liability. For the foregoing reasons and as further detailed in the Trustee's original brief, the Trustee respectfully submits that the Bankruptcy Court's judgment should be reversed to hold DeLong & Caldwell, LLC and consequently Michael Caldwell and Earnest H. DeLong, Jr., jointly and severally liable for the damages awarded by the Bankruptcy Court to the Trustee.

Respectfully submitted,

PHELPS DUNBAR LLP

By: /s/ Brent B. Barriere
 Brent B. Barriere, T.A. (La. Bar No. 2818)
 Catherine E. Lasky (La. Bar No. 28652)
 365 Canal Street, Suite 2000
 New Orleans, LA 70130
 Telephone: (504) 566-1311
 Facsimile: (504) 568-9130

**ATTORNEYS FOR J. LESTER
 ALEXANDER, III, TRUSTEE FOR
 TERRY MANUFACTURING
 COMPANY, INC. AND TERRY
 UNIFORM COMPANY, LLC**

CERTIFICATE OF SERVICE

I hereby certify that I have on this 14th day of January, 2008, electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send notice of electronic filing to all counsel of record who have consented to electronic notification and have served a copy of the foregoing by United States Mail, properly addressed, postage pre-paid to the following persons:

Mr. Ernest H. DeLong, Jr.
Mr. Charles Bridgers
DeLong, Caldwell, Novotny & Bridgers LLC
Centennial Tower, Suite 3100
101 Marietta Street N.W.
Atlanta, GA 30303

/s/ Catherine E. Lasky